IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 997 of 1985

For Approval and Signature:

HONOURABLE MR.JUSTICE J.R.VORA

HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT
Versus
SHYAM SHRIRAM KAHAR & ORS

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Appearance :
MR KC SHAH APP for Appellant
MR YOGESH S LAKHANI with MR. MAULIN PANDYA for Opponents No. 1, 2, 4 - 8.
ABATED for Opponent No. 3

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CORAM : HONOURABLE MR.JUSTICE J.R.VORA

and

HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

Date : 13/08/2007

CAV JUDGMENT : (Per : HONOURABLE MR.JUSTICE J.R.VORA)

1 This Appeal is preferred by the State under Section 378 of the Criminal Procedure Code against the judgment and order delivered by Additional Sessions Judge, District - Baroda, on 2nd of August, 1985, in Sessions Case No. 154 of 1984.

2 According to prosecution case, the incident occurred on 9th of July, 1984 at about 8.45 p.m. in the area of Sursagar Lake where Sharada Talkies is situated. It is alleged that all the eight accused formed an unlawful assembly with a common object to commit murder of deceased Rashmikant Kanaiyalal Mehta and his brother Shaileshkumar Kanaiyalal Metha, and to fulfill the common object, accused No.1 with gupti, accused No.3 with pen knife, accused No.4 with razor and accused Nos. 6 and 8 with hockey sticks and pipes, attacked deceased Rashmikant Kanaiyalal Mehta and his brother Shailesh Kanaiyalal Mehta. According to further prosecution case, PW Shaileshkumar along with his brother Rashmikant Kanaiyalal Mehta, had been to watch movie, named as `Kaidi' at Sharada Talkies at about 8.45 p.m. and they were standing near the booking window of the upper stall. Accused No.1 Shyam Shriram Kahar had been working as Booking Clerk of upper stall at that juncture and he came

out and inquired from deceased Rashmikant that why had he come to see picture in Sharada Talkies. There was exchange of words between them and in the meantime accused Nos. 2 to 5 also reached there and started beating deceased Rashmikant with fists and kicks. Accused No.3 Kishor @ Killo Umajirao Baroker attempted to inflict a blow by knife, but deceased Rashmikant snatched the knife from accused No.3 and wielded the knife towards accused No.3, but the said blow landed on accused No.5 Parshram @ Paresh Kanaiyalal Kahar. On seeing serious trouble, Shailesh ran towards Prince Talkies while deceased Rashmikant ran towards Navrang Talkies and both of them in opposite direction. Accused Nos. 1 to 5 chased deceased Rashmikant and while Shailesh reached near public toilet of Prince Talkies, he noticed that his brother deceased Rashmikant was running near the building of Kurani Classes and accused Nos. 1 to 5 were chasing his brother. Accused Nos. 1 to 5 reached Rashmikant near the shop `Chhotu Printing Works' and opposite that the brink of Sursagar Lake was situated. Rashmikant had fallen on the ground and thereafter all the five accused started beating Rashmikant with weapons which they had. Accused No.5 Parshram was standing there. Thereafter, all the five accused lifted deceased Rashmikant and threw him away in Sursagar lake. Shailesh further noticed that thereafter all these five accused i.e. accused Nos. 1 to 5 started coming towards him and,

therefore, he ran from that spot. When he reached near Prince Talkies, he found accused Nos. 6, 7 and 8, who had hockey sticks and pipes with them and these three accused Nos. 6, 7 and 8 started beating Shailesh. A crowd was gathered and so these three accused ran away from the spot. Shailesh thereafter, in a rickshaw, went to the hostel where his friend PW Jayant Joshi was staying. According to further prosecution case, at about 5.00 a.m. on the next day, Shaileshkumar went to SSG Hospital for treatment and there he found that dead body of his brother Rashmikant was lying on one stretcher. He found that there were injuries on the body of his brother. He took his treatment and went to Raopura Police Station and gave complaint, which is at Exhibit-92. This complaint was registered at Raopura Police Station, vide Crime Register No. 563/84, for the offences punishable under Sections 147, 148, 149, 302, 201 of the Indian Penal Code and for the offence punishable under Section 135 of the Bombay Police Act. Investigation was handed over to the Deputy Superintendent of Police Mr. Thakur. In the meantime, accused No.5 Parshram had also received injuries in the said incident and according to the prosecution case, PW – Kaushikbhai, friend of Parshram, took Parshram to the hospital for treatment on moped. Kaushikbhai had a tea stall. When they reached near Babajipura Police Station on way to hospital, Parshram narrated the incident to police there, but he was advised to go to

Raopura Police Station for recording of complaint. Parshram was injured and it was necessary to take him to hospital, so PW – Kaushikbhai brought him to the hospital where he was admitted. He also offered his complaint in the hospital, which was recorded by PW–24 PSI Panchal, which is on record at Exhibit – 104. Before recording of his complaint, Parshram had informed duty Constable and in turn the said duty Constable informed the Police Station, but that information was not in detail. PSI of Raopura Police Station Mr. Panchal visited the hospital and recorded complaint at Exhibit 104 as against the deceased Rashmikant and a crime was registered vide Crime Register No. 562/84 for the offence punishable under Section 324 of the Indian Penal Code. Deputy Superintendent of Police Mr. Thakur took the charge of investigation of Crime Register No. 563 of 1984 and investigated the offence. He recorded the statements of concerned witnesses and draw the panchnamas. He arranged the test identification parade for accused Nos. 6, 7 and 8 and ultimately a charge sheet against eight accused came to be submitted in the Court of Judicial Magistrate, First Class, Second Court, Baroda and was registered as Criminal Case No. 3749 of 1984 for the above said offences. The case was committed to the Court of Sessions and was registered as Sessions Case No. 154 of 1984. Vide Exhibit–5, the learned Additional Sessions Judge, Baroda, framed charges against all the eight accused on 8th of April, 1985 and all the

eight accused pleaded not guilty and, therefore, the prosecution tendered documentary evidence as well as 29 witnesses.

3 During pendency of the Appeal, it is found that respondent No.3 i.e. original accused No. 3 Kishor @ Killo Umajirao Baroker had died and, therefore, vide order dated 12th of June, 2007 passed by this Court, this Appeal stood finally abated as against respondent No.3 Kishor @ Killo Umajirao Baroker.

4 The gist of the prosecution evidence is as under :

PW-1 Shaileshkumar Kanaiyalal Mehta is examined at Exhibit -35. PW-2 Jayantkumar Joshi is examined at Exhibit – 36 with whom Shaileshkumar Kanaiyalal Mehta stayed a night. PW-3 Parsant Indravadan Shah, examined at Exhibit – 37, is an eye witness. PW-4 Mukesh Dahyalal Dalwadi, examined at Exhibit -39, is also an eye witness. PW-5 Nalin Kanaiyalal Mehta is examined at Exhibit – 40 who is the elder brother of the deceased. PW-6 Ranchhodbhai Somabhai Rohit, examined at Exhibit – 42, was a sainik in Fire Brigade and on receiving information by Fire Brigade, he was deputed to Sursagar lake for searching dead body of Rashmikant and they searched the dead body. PW-7 Dinesh Fakira Kahar, examined at

Exhibit – 44, was the then door keeper of Sharada Talkies and he is also an eye witness. PW-8 Subhashchandra Navnitlal Thakkar, examined at Exhibit – 45, is Telephone Operator of Fire Brigade at Baroda, and according to him, at 13.00 hours, information was received from Madhu Srivastav by telephone that somebody was thrown in the lake and, therefore, he deputed sainiks to search the body. PW-9 Kaushikbhai Jayantilal Patel is examined at Exhibit – 59, who had taken injured accused Parshram to the hospital. PW-10 Umakant Chandulal Mistry, examined at Exhibit-60, is panch witness of inquest panchnama at Exhibit – 61. PW-11 Sundar Asandas Sindhi, examined at Exhibit– 63, is panch of panchnama at Exhibit-64 whereby the clothes of deceased were seized by police. PW-12 Kanaiyalal Jashvantlal Mehta, examined at Exhibit – 65, is father of the deceased, who was informed about the incident on the next day about 7.30 a.m. PW-13 Kanchanlal Ambalal Shah, examined at Exhibit – 67, is a City Mamlatdar and he produced on record a map of scene of offence at Exhibit – 68. PW-14 Pravinbhai Keshavlal Patel, examined at Exhibit – 69, is a Doctor, who examined injuries of PW Shailesh Kanaiyalal and accused Parshram. He produced on record certificates in this respect at Exhibit – 70 and Exhibit – 71. PW-15 Hasmukh Ambalal Patel is examined at Exhibit – 72 and he was Executive Magistrate, who conducted test identification parade of accused Nos. 6, 7 and 8 and produced

panchnama at Exhibit – 75. PW-16 Ravindra Suryakant Desai, panch of panchnama at Exhibit – 75 of T.I. Parade, is examined at Exhibit – 77. PW-17 Ullas Shitaram Savant, a panch of scene of offence panchnama, Exhibit-79, is examined at Exhibit-78. PW-18 Dr. Uday Ramchandra, examined at Exhibit– 80 who conducted postmortem on dead body of the deceased at 11.45 on 10th of July, 1984 and according to him cause of death was asphyxia due to drowning with injuries and cut wounds to right hand and face. He produced Postmortem Note at Exhibit – 81. PW-19 Girishbhai Maheshbhai Bhatt, examined at Exhibit – 82, is a panch of panchnama at Exhibit – 83 whereby as per the information of accused No.1, from a cupboard kept in his house, one gupti was discovered through panchnama Exhibit-84, to which this witness was panch. From accused Kishor, one pen knife was recovered from the house of the said accused through panchnama Exhibits 85 and 86, to which this witness was panch. From the houses of accused Chetan Bhikhabhai Kahar and accused Devla @ Deviprasad Shankerbhai Kahar, hockey sticks and iron pipes were discovered. PW-20 Madhavsinh Chatrasinh Mahida, examined at Exhibit – 88, was Police Constable of Raopura Police Station. According to him, while he, after discharging his duties, was going to recover his cycle placed at Babajipura Police Station, PW-9 Kaushikbhai and accused Parshram met him and informed him about the incident and he advised them to go

to Raopura Police Station. PW-21 Bhaskarrao Dolatrao, examined at Exhibit – 89, was Constable at Police Control Room, and according to him, he received information from Fire Brigade that a boy had drown in Sursagar lake, which he recorded at Exhibit – 90. PW-22 Madhavsinh Gulabsinh Solanki, examined at Exhibit– 91, is concerned PSI of Raopura Police Station, who noted the complaint of Shailesh at 6.30 a.m. on 10th of July, 1984. PW-23 Mahadu Sakharam, examined at Exhibit- 101 was hospital duty Head Constable at relevant time. He wrote a wardhi in respect of accused Parshram at 21.30 hours on 9th of July, 1984 and informed to the police station. Wardhi is produced at Exhibit – 161. Further at about 4.30 a.m. next day, dead body of Rashmikant was brought to the hospital and he noted the injuries on the dead body. According to witness, brother of deceased was with the dead body. PW-24 Jayantilal Hiralal Panchal, examined at Exhibit – 103, was PSI of Raopura Police Station at relevant time and he recorded the complaint of accused Parshram and investigated the same. Complaint is produced on record at Exhibit – 104. PW-25 Khatrabhai Pratapbhai, examined at Exhibit–106, was Police Constable of Raopura Police Station at the relevant juncture and according to him he received message from mobile operator that a boy had fallen in Sudsagar lake. He made entry in this respect, which is produced at Exhibit – 107. PW-26 Ramjibhai Chaganbhai, examined at Exhibit – 108, is also a Head Constable and he

presented clothes etc recovered from the dead body of the deceased and presented before the Investigating Officer, who seized those articles. PW-27 Prakash Laxmanrao Jadav, examined at Exhibit – 111, is panch of panchnama at Exhibit -112 in respect of accused Ramesh Bajrang Kahar for discovery of gupti, but he has not supported the prosecution case. PW-28 Kamalsinh Kevalsinh Pardeshi, examined at Exhibit – 113, who was the then In-charge of Raopura Police Station and he received information from hospital duty constable from SSG Hospital in respect of accused Parshram and he recorded the said message, which is produced at Exhibit – 114. Last witness PW - 29 Pritamchand Thakur is examined at Exhibit – 117, who was the then Dy. S.P. and investigated the offence and chargesheeted the accused.

5 After the evidence was over, the Trial Judge recorded statements of each of the accused under Section 313 of the Code of Criminal Procedure. Each accused stated that a false complaint had been filed against them and on account of enmity between group, they were falsely implicated in the case. In further statements, certified copies of other criminal litigations between the parties, have been produced by the accused and stated that witness Prasant Indravadan and Mukesh Dahyalal Dalwadi were also witnesses of the complainant side in earlier litigations. It is submitted in explanation that in earlier

cases, these witnesses being friends, became witnesses of deceased Rashmikant and Shailesh and, therefore, they were not required to be believed. After hearing the prosecution and the defence, the Trial Judge came to the above conclusion of acquitting the accused and, hence, this Appeal against the acquittal.

6 Learned APP Mr K C Shah for the appellant State vehemently submitted that appreciation of evidence by the Trial Court is not only erroneous but perverse. Probable conduct of a witness cannot be according to set norms and in given circumstances one may react differently and, therefore, the observations of the Trial Judge discarding the evidence of witnesses on account of their conduct especially of PW-1 Shaileshkumar appears to be perverse. It is submitted that there is no reason to disbelieve witness Prasant Indravadan Shah and witness Mukesh Dahyalal Dalwadi, who are the eye witnesses to the incident and only because they were friends of the complainant, it would not be proper to discard their evidence in toto. It is submitted that though the First Information Report is filed late, but for that, it is explained that the complainant was in constant fear of the accused and could not go out of the hostel where witness Jayant Joshi was staying and, therefore, the FIR could be filed on the next day early morning. Shailesh had injuries on his body and it has been proved by medical evidence and the

presence of Shaileshkumar at the incident cannot be doubted. He was corroborated by two other witnesses and medical evidence. It is submitted that discarding of the evidence on the grounds as given by the Trial Court about the conduct of the witnesses are not tenable and requires interference. It is submitted that there was no earthly reason that why complainant would involve present accused in a false case where he has lost the life of his brother. It is, therefore, submitted that this is a case where interference of the Court is required and allowing the Appeal on the cogent evidence adduced by the prosecution, accused are required to be convicted.

7 On the other hand, learned Senior Counsel Mr. Y.S. Lakhani along with learned Advocate Mr. Maulin Pandya for the respondents submitted that eye witnesses are rightly not believed by the Trial Court on account of their strange conduct not to file the First Information Report in time and not to approach police even if it is assumed that they were put in fear, it was natural for them to approach Police instead of staying indoor on false pretext. No motive is attributed to at least against accused Nos. 6, 7 and 8. Eye witnesses Prasant Indravadan Shah and Mukesh Dahyalal Dalwadi are chance witnesses and their say about their presence at the scene of offence was extremely doubtful. No independent witness came to be examined by prosecution. FIR is late

by 10 hours and explanation given by the prosecution witness is feeble and unbelievable. The real eye witnesses, whose names are revealed in the investigation, were not examined. It was not the prosecution case that the accused knew in advance that Shaileshkumar and his brother were to come at Sharada talkies to watch movie and, therefore, it is unbelievable that how without any pre-meeting or premeditation of the accused, all the accused got together. There are contradictions in the evidence of eye witnesses and overall in the prosecution case, which have been taken care of by the Trial Court and have been discussed at length. Test identification parade has not been held according to precautions and cannot be taken into consideration. It is submitted that findings of the Trial Court are based on proper appreciation of evidence and no interference is called for. The findings of the Trial Court are as per the evidence recorded and in no case can be said to be perverse or unsustainable. It is submitted that in appeal against acquittal even if the second view is possible from the evidence recorded, unless findings are unsustainable, no interference can be made. It is, therefore, submitted that no interference is required in the well reasoned judgment and order of the Trial Court.

8 We have undertaken a complete and comprehensive appreciation of all vital features of the prosecution case and the entire

evidence on record with reference to broad and reasonable probabilities of the case and we have also considered the contentions raised in this appeal. It is found from the evidence of PW-1 Shailesh Kanaiyalal Mehta that the incident has occurred near Sharada Talkies where there were group of persons waiting near booking window. It is found that he changed his version in deposition about he intervened in the quarrel. However,very important aspect about injuries received by accused Parshram could not be stated by him in his complaint at Exhibit – 92 nor this fact he stated in his further statement recorded by the Investigating Agency on the next day. It is also noticed in the deposition of Shaileshkumar that while he was going from scene of offence to the hostel where witness Jayant Joshi was staying, there were many police stations on the way, but he did not attempt to approach any of the police stations. On the day of the incident, there was a festival and, therefore, there was police bundobust. The way in which he has deposed that the accused chased Rashmikant upto Sursagar lake and threw him in the lake, appears to be unnatural. Most important aspect is that he did not notice the two eye witnesses i.e. Prasant Indravadan Shah and Mukesh Dahyalal Dalwadi, though according to two witnesses, they were situated at the scene of offence in a manner that it would not have been missed by eye witness Shailesh. The conduct of this witness is also doubtful that instead of going to his

home and inform family members, he went to Jayant Joshi. The same way, Prasant Indravadan Shah and Mukesh Dalwadi, both appears to be chance witnesses and both of them, according to evidence, were witnesses in other litigations of complainant party. Had they seen the incident, then, both of them must have stated so in their depositions the incident in the similar manner, but both of them narrated the incident in different manner. The learned Trial Judge has dealt with this aspect in paras 10 and 11 of his judgment.

9 It appears that PW-2 Jayant Joshi, Exhibit - 36, is examined by the prosecution only for explaining the delay in filing the FIR. It is strange that Jayant Joshi also stated that when he advised Shaileshkumar to go to police station and when they came out of the hostel, they found that some four/five persons, appearing as “goondas” were at the gate of the hostel and therefore they had not go out of hostel at night and stayed in hostel only. This is the quality of the evidence comes from the witnesses and, therefore, it clearly appears that fabricated excuses are created for filing late FIR, as in natural course, it would not be difficult at all for Shaileshkumar to go to the police station and gave the complaint. Accused never knew that Shaileshkumar was in the hostel with PW-2 Jayant Joshi, and the explanation that they found some persons at the gate, appears to be

camouflaged. This is the reason that neither Shailesh nor Jayant Joshi could be believed and no much reliance can be placed upon their evidence. While we further probe and appreciate the probability arising out of the case, we also found that, conduct of Shaileshkumar in not preferring the FIR at the earliest, casts doubt on the evidence of prosecution. When he noticed that his own brother was thrown in a lake, who did not know swimming, it would be difficult to believe that such a person like Shaileshkumar would remain silent and would go to the hostel of Jayant Joshi and would not file complaint or would not take any step in respect of the incident.

10 It is found from the prosecution case that PW-5 Nalin Kanaiyalal Mehta, elder brother of the deceased, came to know at 9.45 p.m. that somebody had picked up a quarrel with Rashmikant, but instead of gathering information in this respect, according to this witness, he went to his home and inquired from his father Kanaiyalal. Like wise, when the evidence of father Kanaiyalal is appreciated, it is found that he came to know about the incident at about 7.3o in the morning, but at night, some persons in rickshaw came to this house and inquired about Rashmikant. Those persons were not allowed to enter in the house. Both these witnesses admitted that Madhu Srivastav, a Corporator had visited their house and informed that Rashmikant was

involved in one quarrel, to the extent that, Nalin Kanaiyalal was informed by Madhu Srivastav that Rashmikant was thrown in Sursagar lake, even then, for whole night, neither brother PW-5 Nalin Kanaiyalal nor father Kanaiyalal, took any steps to inquire about the incident nor they approached any police station for complaint.

11 As per the prosecution case, PW-8 Subhashchandra Navnitlal Thakkar was also informed by Madhu Srivastav at Fire Brigade Station that a person was thrown in Sursagar lake. This was the information received by Subhashchandra Navnitlal Thakkar telephonically. Thereafter he made entries in his register that the name of the person was Rashmikant and some persons were chasing him and he fell in Sursagar lake. He admitted in his deposition at Exhibit – 45 that he entered this fact afterwards returning from the hospital where they had delivered the dead body. In fact he came to know about the name Rashmikant and the fact about chasing Rashmikant by some persons from the hospital only and thereafter he made those entries in registers.

12 Necessary it is to appreciate the evidence of PW-23 Mahadu Sakharam, examined at Exhibit – 101 and in his statement before the court he stated that at 4.30 a.m. dead body of Rashmikant

was brought to the hospital by a Fire Brigade personnel and along with the dead body the brother of the deceased was accompanying. If we appreciate this statement of this witness, only inference can be drawn is that, Shailesh was accompanying dead body upto the hospital, and then whatever he has stated about going to the hostel of Jayant Joshi becomes doubtful. Not only that, the witness Mahadu Sakharam stated that the brother of the deceased informed him that in the incident he was also injured and, therefore, witness Mahadu Sakharam advised the brother of the deceased to go to police station. This fact denotes that while dead body was being searched in lake, Shailesh, perhaps, was present at Sursagar lake, and even then, though according to him, the incident occurred at 8.45, the complaint came to be recorded on the next day at 6.30 a.m.

13 It has been established during the evidence that there was enmity between the parties and cross criminal cases were registered on account of election in the college.

14 There is contradiction in the say of Shailesh and the medical evidence. According to the evidence of Dr. Pravinbhai Keshavlal Patel, Exhibit–69, he found that the hand of Shaileshkumar was not dislocated nor he found any medicine applied on the injuries of Shailesh.

While Shailesh stated that Jayant Joshi applied iodine on his injuries and his hand was dislocated.

15 The evidence of test identification parade, as has been led by the prosecution, is not believable. No care has been taken by concerned Executive Magistrate to find out dummy persons resembling to accused Nos. 6, 7 and 8. Panch examined to prove identification parade i.e. Ravindra Suryakant, appears to be interested, as he is neighbour of the complainant and was serving in Land Mortgage Bank where the father of the deceased was an Officer.

16 It is an admitted fact that in first incident which took place near the booking window of Sharada Talkies, according to the prosecution case, Parshram accused No. 5 was injured and PW-9 Kaushikbhai took him to the hospital, even then, all the eye witnesses stated that near the building of Chhotu Printers where second incident took place, Parshram was present and was standing. This is, perhaps, with a view to fabricate an unlawful assembly by the prosecution. On account of this, the second incident which occurred near Sursagar lake is shrouded with the clouds of doubts.

17 It is necessary to note here that PSI Panchal in pursuance of

complaint filed by Parsaram, visited the scene of offence near booking window of Sharada Talkies and did not find any bloodstains or anything, even then, in the present case, second panchnama of scene of offence was prepared thereafter and bloodstains were found from tar road.

18 In the present case though injured eye witness Shaileshkumar is examined, two other witnesses Mukesh Dahyalal Dalwadi PW-4 and PW-3 Prasant Indravadan Shah are also examined to be eye witnesses, but their evidence is found tainted on re-appreciation. Other eye witness PW-7 Dinesh Fakir Kahar is though examined and he has turned hostile and on the contrary stated that at the relevant juncture accused No.1 Shyam Shriram Kahar, being booking clerk, was at the window. Apart from the evidence of PW-7, when the evidence of other these three witnesses along with the evidence of PW-5 Nalin Kanaiyalal and PW-12 Kanaiyalal Jashvantlal Mehta is appreciated, in uncertain terms a doubt is created in prosecution case.

19 True that injured witness is required to be given more weightage in evidence because his presence cannot be doubted, but at the same time, mere injury on the witness and some consistency in their say, is not the sure guarantee of truth and their evidence must be put to test of probability and truthfulness. Their version, keeping in mind

the whole scenario of the prosecution case, must be weighed as to the credibility of the say of the witnesses. Intrinsic worth of the say of the witnesses, even all the eye witnesses, must be tested in perspective of total prosecution case and probabilities arising out of such exercise. When contradiction going to the root of the prosecution case and infirmities are found in the say of the eye witnesses so as to render the prosecution case doubtful, it would be highly hazardous to place any reliance on such witnesses. Shaileshkumar, undoubtedly, was injured witness, but his conduct was so improbable in the facts and circumstances of the case that the same could not be adjusted to the total scenario of the prosecution case and found doubtful as to lead to the inference that the prosecution witnesses suppressed the genesis of the incident. While other two eye witnesses failed to account for their presence at the scene of offence, more particularly, when it was an established fact that in earlier criminal litigations as well they stood as witnesses of the complainant side. Thus, when intrinsic worth of the witnesses were examined carefully, it is found that, no reliance can be placed on these witnesses to establish the prosecution case.

20 It is well established principle of law that while dealing with the appeal against the acquittal what is necessary is to examine first the reasons recorded by the Trial Court for the acquittal. Unless those

reasons are found perverse, even if other view is possible from the same evidence, no interference is permitted in acquittal appeals. In the matter of AJIT SAVANT MAJAGAVI vs. STATE OF KARNATAKA, as reported at (1997) 7 SCC 110 the Apex Court explained the scope of Appeals against the acquittal in para -1 6 as under :

> (1) In an appeal against an order of acquittal, the High Court possesses all the powers, and nothing less than the powers, it possesses while hearing an appeal against the order of conviction.
>
> (2) The High Court has the power to reconsider the whole issue, reappraise the evidence and come to its own conclusion and findings in place of the findings recorded by the trial court, if the said findings are against the weight of the evidence on record, or in other words, perverse.
>
> (3) Before reversing the finding of acquittal, the High Court has to consider each ground on which the order of acquittal was based and to record its own reasons for not accepting those grounds and not subscribing to the view expressed by the trial court that the accused is entitled to

acquittal.

(4) In reversing the finding of acquittal, the High Court has to keep in view the fact that the presumption of innocence is still available in favour of the accused and the same stands fortified and strengthened by the order of acquittal passed in his favour by the trial court.

(5) If the High Court, on a fresh scrutiny and reappraisal of the evidence and other material on record, is of the opinion that there is another view which can be reasonably taken, then the view which favours the accused should be adopted.

(6) The High Court has also to keep in mind that the trial court had the advantage of looking at the demeanour of witnesses and observing their conduct in the court especially in the witness box.

(7) The High Court has also to keep in mind that even at that stage, the accused was entitled to benefit of doubt. The doubt should be such as a reasonable person would honestly

and conscientiously entertain as to the guilt of the accused.

21 Now while examining the reasons recorded by the Trial Court for acquittal of the accused, as recorded by the Trial Court in paras 10, 11 and 12 as well as in paras 30 to 34, it clearly appears that what is weighed with the Trial Court was the conduct of injured eye witness Shaileshkumar and the doubtful presence of other two eye witnesses at the scene of offence. In detailed discussion the learned Trial Judge observed that there was no necessity for Shaileshkumar to go to the hostel of Jayant Joshi instead of going to police station or at least to his home to take necessary steps in pursuance of the incident and to save the life of his own brother. Like wise conduct of his elder brother Nalin Kanaiyalal as well as his father Kanaiyalal also appears to be doubtful. Witness Prasant Indravadan Shah and Mukesh Dahyalal both failed to establish the reasons for being present at the scene of offence at the relevant juncture and more particularly when they were alleged to be friends and thickly associated with the complainant side. The improbable manner in which the incident was described by the prosecution is discussed by the Trial Court in the above paragraphs of its judgment. The late filing of FIR, according to the Trial Court, was not explained and the reasons was that, perhaps, the incident had occurred in some different manner and the fabrication on the part of the

prosecution witnesses to bring Jayant Joshi, as sheltering the complainant for a night, appears completely doubtful. According to the learned Trial Judge, it comes out even from the evidence of the prosecution that one injured brother accompanied dead body of Rashmikant upto the hospital and he was advised by Mahadu Sakharam, hospital duty Head Constable to file a complaint before Raopura Police Station. According to Trial Judge, all these infirmities taking together becomes fatal to the prosecution case and the whole case on careful scrutiny becomes doubtful. Thus, the reasons recorded by the Trial Court are reasonable and plausible and based on the evidence recorded during the trial. No extraneous material has been utilized by the Trial Court to come to the conclusion of acquittal. The above reasons recorded by the Trial Court appears to be proper even from the standard of a prudent person. Though we have undertaken our own appreciation of evidence and reached to the same conclusion as has been reached by the Trial Court, but even though second view may be possible from the same evidence, no interference is permitted in appeals against the acquittal unless the reasons recorded by the Trial Court for the acquittal are perverse. From the threadbare scrutiny of the reasons recorded by the Trial Court undertaken by us, leaves no room for a finding that the reasons are palpably wrong, perverse and demonstrably unsustainable. This is the possible view which could be taken from the evidence

recorded even though there are injured eye witnesses. Therefore, we do not find any merit in the present appeal and the judgment and order impugned is not exceptionable.

22 In view of above discussion, this Appeal stands dismissed. Bailable warrant issued against each of the respondents stand cancelled.

(J. R. VORA, J.)

(BANKIM.N.MEHTA, J.)

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